IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2821 of 1984

Date of Decision: January 2, 2012

State of Haryana .....Appellant

Versus

Sish Ram through his LRs .....Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.KC Bhatia, Additional Advocate General, Haryana
for the appellant.

Mr.RS Tacoria, Advocate with
Mr.SS Malik and Mr.Sumeet Sheokand, Advocates
for the respondent.

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TEJINDER SINGH DHINDSA, J.

The State of Haryana is in second appeal against the judgment and decree dated 2.8.1984, passed by the Additional District Judge, Karnal whereby the appeal filed by the defendant-appellant against the judgment and decree dated 30.8.1983 passed by the Sub Judge IInd Class, Karnal was dismissed.

2. The plaintiff-respondent filed a suit seeking declaration to the effect that he was a small land owner and as such, the order of the Collector insofar as land having been declared surplus was illegal and void, and as a consequential relief prayed for restraining the defendant from utilizing the said land. It was pleaded by the plaintiff-respondent that he was owner in possession of land measuring 23 Kanals 8 Marlas comprised in Khewat No.228 Khatoni No.303, Rectangle No.129 Killa Nos.3,4 and 9 situated in

village Vaisor, Tehsil Panipat, District Karnal. Out of the total holdings, the plaintiff-respondent pleaded that he had sold away land measuring 77 Bighas 14 Biswas to Gaje Singh etc. regarding which mutations were sanctioned on 25.5.1958. After deducting such land from his total holdings, he ceased to be a big land owner. The Authority, under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter to be referred as '1972 Act') declared 8 standard acres, 3-3/4 units as surplus. It was pleaded that no notice was served on the plaintiff-respondent and no opportunity whatsoever was given to him regarding the calculation of the land owned by him. The Authorities wanted to utilize the disputed land measuring 23 Kanals 8 Marlas and accordingly, he had filed objections unsuccessfully and even the appeal before the Collector, Karnal was dismissed on 28.7.1980.

3. The State of Haryana opposed the suit in terms of questioning the jurisdiction of the Civil Court. It was pleaded in the written statement that consequent upon the dismissal of the appeal by the Collector on 28.7.1980, it was open for the plaintiff to have availed of his remedies before the Commissioner or the Financial Commissioner and he having chosen not to avail of the remedies available under the Act, the suit before the Civil Court was not maintainable. A specific plea regarding the suit being time barred was also raised by stating that the disputed land had already been utilized on 26.5.1978. Furthermore, it was pleaded that as the plaintiff had not filed any statement regarding the transfer of his land as alleged in the suit, the Competent Authority under the Act had rightly declared his land as surplus.

4. Upon the pleadings of the parties, the following issues were framed:

1) Whether the orders dated 27.5.60 and 30.10.62 are illegal, void and not binding on the plaintiff, if so, to what effect? OPP
2) Whether the civil court has no jurisdiction to try the present suit as alleged in Preliminary Objection no.1 of the written statement? OPD
3) Whether the valid notice was served by the plaintiff to the defendant? OPP
4) Whether the present suit is time barred? OPD
5) Relief.

5. I have heard respective counsel for the parties and have perused the records.

6. The primary contention raised by learned counsel appearing for the State is that the plaintiff-respondent had not raised a challenge as regards the orders vide which the land had been declared as surplus. As such, learned counsel contends that the suit was simpliciter for injunction and the Courts below could not have granted a decree of declaration as well, as the same had never been sought. The second submission raised by the learned counsel is with regard to the jurisdiction of the Civil Court and it was vehemently contended that in view of the bar contained in Section 26 of the 1972 Act, no order of the Financial Commissioner, Commissioner, Collector or the prescribed authority could be called into question before any Civil Court. Lastly, learned counsel appearing for the State pleaded that the suit was hopelessly time barred and on this count alone, the second appeal should be accepted.

7. I have perused the pleadings in detail and it emerges therefrom

that the suit filed by the plaintiff-respondent was a composite suit for declaration and injunction and it cannot be accepted that it was just a suit for injunction simpliciter. From the pleadings and, in particular, with reference to the relief paragraph of the plaint, the plaintiff-respondent had specifically sought for a decree of declaration to the effect that the order of the Collector was illegal and void. Consequentially, a relief had also been sought as regard the defendant being restrained permanently from utilizing the land in dispute. Even otherwise, at no point of time was any objection raised by the appellant-respondent as regards issue No.1 which was in categoric terms and read as follows:

> "Whether the orders dated 27.5.1960 and 30.10.1962 are illegal, void and not binding on the plaintiff, if so, to what effect? OPP"

8. As such, the contention of the learned counsel appearing for the State to contend that the trial Court could not have granted a decree of declaration as the same had never been sought for, is without any merit.

9. Rule 6, sub-clause (3) of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to '1956 Rules') would be relevant for the issue raised in the present second appeal and the same reads as under:

> "6.(3). The circle revenue officer, shall, after holding such enquiry as he thinks fit and after giving the persons concerned an opportunity of being heard, forward his report to the Collector."

10. In terms of Rule 6, sub-clause (3) of the aforesaid Rules, it is obligatory on the Circle Revenue Officer to forward his report to the Collector after holding such enquiry as he thinks fit and after giving the persons concerned an opportunity of being heard. DW1 Ram Chander,

Patwari who was examined by the Department in support of their contention, clearly admitted in his cross-examination that as per record, no notice under Rule 6(3) of the 1956 Rules had been given to the plaintiff-respondent. A clear mandate of the Rule had been violated in the facts of the present case and as such, the orders declaring the land of the plaintiff-respondent to be surplus cannot be sustained.

11. As regards the bar envisaged under Section 26 of the 1972 Act is concerned, it is well settled that whenever an authority exercises its powers in violation and in utter disregard of the statute, the jurisdiction of the Civil Court would not be ousted. This Court in **Bhag Mal and others v. Ram Murti and others,** decided on 3.8.2004 and reported as **2005(1) PLR 116,** had observed in the following terms:

> "16. The argument that suit of the plaintiffs-respondents was not maintainable in view of the bar created by Section 26 of the 1972 Act, would not require any detailed consideration because once it is found that the principles of natural justice have been violated and no process under Section 14 to separate the surplus area was undertaken after affording an opportunity of hearing, then, the ratio of Full Bench judgment of this Court in Vinod Kumar's case (supra) would come into play and the suit would be maintainable despite the bar created by Section 26 of the 1972 Act. The Civil Court cannot be deemed to have waived the jurisdiction in cases where a plaintiff complains of violation of principles of natural justice and wanton disregard to the provisions of law. Therefore, the argument raised by the learned counsel that it is a mere irregularity as provided by Section 99 of the Code of the jurisdiction is barred by virtue of Section 26 of 1972 Act, would be completely misconceived. The Full Bench of five Judges placed reliance on two judgments of the Supreme Court in the cases of **Katikara**

Chintamani Dora v. Guatreddi Annamanaidu, AIR 1974 SC 1069 and M/s Kamala Mills Limited v. State of Bombay, AIR 1965 SC 1942. In both the aforementioned judgments, it has been authoritatively held by the Supreme Court that exclusion of the Civil Court is subject to two limitations:-

(1) The Civil Court would still enjoy jurisdiction to examine the cases where the provisions of a statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure;

(b) The Civil Curt is also entitled to examine exact extent to which the powers of statutory tribunals are exclusive.

17. After examining the aforementioned Supreme Court judgments and other judgments, their Lordships of the Full Bench have observed as under:-

"In the fact of this authoritative pronouncement there is no room for any doubt that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the Civil Court even if the statute expressly bars the jurisdiction of the Civil Court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. This question was once again considered by a Constitution Bench of the Supreme Court in **Dhulabhai etc. v. State of Madhya Pradesh and another, AIR 1969 SC 78**, and the seven principles contained in the judgment of the learned Chief Justice were enunciated. The scope of the observations made and the rule laid down in M/s. Kamala Mill's case (supra) came under specific consideration of the Bench and it was observed that the Special Bench (In M/s.Kamala Mill's case) refrained from either accepting the dictum of Mask Co's case 67 Ind. App.222: AIR 1940 PC 105 or

> rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision of the authorities final, the civil Courts have jurisdiction to examine into cases where the provisions of the particular Act are not complied with. The jurisdiction of the civil Court to try the suits against the orders passed by the Tribunal of Special jurisdiction in violation of the provisions of the statute or principles of natural justice was thus upheld even through the jurisdiction of civil Court to question the legality or validity of the orders of the Tribunal was expressly barred by the statute."

12. The concurrent finding of the Courts below is to the effect that no notice had been served and no opportunity had been granted to the plaintiff-respondent prior to his land having been declared surplus. The action was clearly in violation of the rules of natural justice. The bar as regards jurisdiction of the Civil Court would not extend in entertaining a civil suit in cases where the principles of natural justice have been violated or there has been an utter disregard of the statutory provisions.

13. Learned counsel for the appellant has also pressed the argument as regards the suit itself being barred by time. It has been contended that the land had been utilized on 26.5.1978 and the present suit had been filed by the plaintiff-respondent on 23.3.1981. Such submission has been based on document, Exhibit D2, vide which the State is taking a stand that the possession of the land in dispute stood delivered to one Bhulan on 26.5.1978. Such plea stands falsified by the statement of DW1 Ram Chander who, in his cross-examination, stated that the land in dispute was, in fact, in the possession of the plaintiff-respondent. Clearly, the suit was filed within one year of the order dated 28.7.1980 passed by the Collector

on account of which the plaintiff-respondent had a well-founded apprehension regarding his possession being threatened. Both the Courts below have found the suit being filed within the period of limitation prescribed. No interference as such is warranted on such score.

14. No question of law, much less substantial question of law, arises for determination in this second appeal.

15. For the reasons recorded above, the present second appeal must fail being devoid of merit and is, accordingly, dismissed.

16. Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

January 2, 2012
SRM

***Note**: Whether referred to the Reporter? Yes/No*